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No. 750

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

COMPLETE AUTO TRANSIT, INC.,
Appellant,

v.

CHARLES F. CARPENTIER, Secretary of State of Illinois,
Appellee.

On Appeal from the Supreme Court of Illinois, En Banc.

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CHARLES F. CARPENTIER, Secretary of State of Illinois,
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On Appeal from the Supreme Court of Illinois, En Banc.

JURISDICTIONAL STATEMENT.

Appellant, Complete Auto Transit, Inc., appeals from a final judgment of the Supreme Court of Illinois which reversed a judgment of the Circuit Court of Sangamon County, Illinois, setting aside an Order of Appellee, Secretary of State of the State of Illinois, and submits this

statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINIONS BELOW.

The Opinion of the Supreme Court of Illinois is reported at 169 N. E. 2d 78. The Order denying the Petition for Rehearing is not reported. The Opinion of the Circuit Court of Sangamon County, Illinois and the final Order of the Secretary of State which is set aside are not reported.

Copies of said opinions and orders and of said final judgment appealed from are set forth in Appendix A.

JURISDICTION.

This appeal involves proceedings pursuant to Illinois Revised Statutes 1957, Chapter 95½, for review of an order made by Appellee imposing upon Appellant certain motor vehicle taxes. The [redacted] and final judgment of the Supreme Court of Illinois was entered on May 18, 1960 (Appendix A). Appellant's timely application for rehearing was denied on September 26, 1960. Notice of Appeal to this Court was filed in the Supreme Court of Illinois on December 22, 1960.

The jurisdiction of this Court to review this decision by direct appeal is conferred by 28 U. S. C., Section 1257 (2).

The judgment of the Supreme Court of Illinois appealed from constitutes a final judgment of the highest court of Illinois sustaining, against claims timely asserted of repugnancy to the Constitution of the United States, the validity of the state tax statute, namely, said Illinois

Motor Vehicle Law, specifically as applied by Appellee to impose taxes upon Appellant. The following decisions are particularly relied on as sustaining this Court's jurisdiction of this appeal:

Bode v. Barrett, 344 U. S. 583, 73 S. Ct. 468;
Smith v. Cahoon, 283 U. S. 553, 51 S. Ct. 582;
Duncan v. State, 152 U. S. 377, 14 S. Ct. 570;
Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423;
Southern Railway Company v. Greene, 216 U. S. 400, 30 S. Ct. 287;
G. C. & St. Fe Ry. v. Ellis, 165 U. S. 150, 17 S. Ct. 255;
Hayes v. State of Missouri, 120 U. S. 68, 7 S. Ct. 350;
Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357;
LaPorte et al. v. Bitker, 55 F. Supp. 882.

STATUTE INVOLVED.

The Illinois statute involved herein is the Illinois Motor Vehicle Law, Illinois Revised Statutes, 1957, Chapter 95½, the pertinent text of which is set out verbatim in Appendix B. Ch. III of the law deals with registration fees of vehicles. Sec. 3-402-B entitled "Reciprocity" provides that "non-resident owners", "owning any foreign registered vehicle" . . . may operate . . . such vehicle within the State without . . . paying any fees . . . subject to the condition that such vehicle at all times . . . is operated pursuant to a reciprocity agreement . . . and . . . is duly registered in . . . the place of residence of such owner . . ."

The purpose of these provisions, administered and applied by Appellee was to secure to Illinois registered vehicles "exemptions, benefits and privileges of a similar kind or to a similar degree as extended to vehicles from such jurisdictions in this State." Sec. 3-402 B-3 (b).

To carry out the purpose the Secretary of State was empowered to negotiate and execute written reciprocal agreements with other states "granting to owners . . . of vehicles duly registered . . . in such other jurisdictions . . . . benefits, privileges and exemptions from payment . . . of any taxes . . . imposed with respect to the ownership and operation of such vehicles by the laws of the State . . ." Sec. 3-402 B-3 (a).

To further carry out the purpose of the law, and in the absence of an agreement, the law at Sec. 3-402 B (1) permits that "a nonresident owner . . . may operate or permit the operation of such vehicle within this state without registering such vehicle in . . . this State . . ." if "such vehicle . . . is duly registered in . . . the place of residence of such owner . . . provided like privileges are afforded to residents of this State by the State of residence of such owner."

The Missouri Statutes involved herein is the Missouri Motor Vehicle Law R. S. Mo. 1949, Chapter 301, the pertinent text is set out verbatim in Appendix C. Section 301.270 provides reciprocity for nonresident owners as follows: "A nonresident owner . . . owning any motor vehicle which has been duly registered for the current year in the state . . . of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such owner in the place of residence of such owner may operate . . . such vehicle within this state without registering such vehicle . . . only to the extent that under the laws of the state . . . of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

QUESTIONS PRESENTED.

Appellant, Complete Auto Transit, Inc. (hereinafter called Complete) owns and operates a business at St. Louis, Missouri. In connection with such business Complete maintains and operates in St. Louis a fleet of Missouri titled motor vehicles on which it has paid applicable Missouri motor vehicle taxes. Appellee purporting to find that Complete was not a resident of Missouri imposed on its Missouri registered motor vehicles, operated in Illinois, the Illinois motor vehicle tax although other Missouri registered vehicles, operated under like circumstances, are exempt. The payment of such Illinois motor vehicle taxes, under Appellee's ruling does not constitute Complete an Illinois resident nor entitle it to the same benefits and privileges enjoyed for such payment by Illinois residents.

The questions presented are, whether Illinois Motor Vehicle Law, Ill. Rev. Stat. 1957, Ch. 95½, as construed and applied to Appellant by the Supreme Court of Illinois in its decision cited supra is:

I—Unconstitutional and void, as depriving Appellant of its property without due process of law in contravention of the 14th Amendment, United States Constitution, because it arbitrarily and unreasonably discriminates against Appellant, a foreign corporation, by denying it Motor Vehicle Registration Reciprocity and requiring it to register its vehicles and pay to Illinois a vehicle registration tax when all such vehicles are operating exclusively into or through Illinois in interstate commerce, and under like circumstances other foreign corporations similarly situated are exempt from such tax.

II—Unconstitutional and void, as depriving Appellant of the equal protection of the laws in contravention of the 14th Amendment, United States Constitution, by discrim-

inating against Appellant and denying it the same privileges of motor vehicle registration enjoyed by other similar foreign corporations and residents of the State of Illinois and thus requiring Appellant to pay to Illinois a motor vehicle fax, but prohibiting to it the exemptions from taxation in other states enjoyed in said states by such other foreign corporations and residents of Illinois.

III—Unconstitutional and void, as depriving Appellant of the equal protection of the laws, in contravention of the 14th Amendment, United States Constitution, by arbitrarily and unreasonably placing Appellant in a class separate and different than other similarly situated foreign corporations engaged solely in interstate commerce and thereby requiring it to pay a motor vehicle tax not imposed on such other similarly situated foreign corporations.

IV—Unconstitutional and void, as depriving Appellant of due process of law, in contravention of the 14th Amendment, United States Constitution, by arbitrarily and unreasonably imposing a motor vehicle tax upon Appellant's vehicles operated exclusively in interstate commerce in Illinois, when under the construction adopted by the Court, the vehicles of other foreign corporations similarly situated, operated exclusively in interstate commerce in Illinois are not subject to such tax.

STATEMENT.

Proceedings Below.

In 1958 and 1959 Appellee denied applications filed by Appellant's St. Louis, Missouri office for exemption of its Missouri licensed vehicles from the tax imposed by the Illinois Motor Vehicle Law (R. 145). Appellant paid the fees for both years under protest and requested a hearing

before Appellee under the provisions of Ill. Rev. Stat. 1957, Ch. 95½, Sec. 3-402.

Hearing was held on both applications on "the same questions" on March 3, 1959 (R. 33). Appellee entered a final order on April 3, 1959, affirming its denial of both applications and thereby subjecting Appellant to the tax imposed by the Illinois Motor Vehicle Law.

Thereupon Complete filed its complaint with the Circuit Court for Sangamon County, Illinois, contending, inter alia, that the statute in its specific application by Appellee herein violated the due process and equal protection clauses of the 14th Amendment of the Federal Constitution (R. 201, p. 8): The Circuit Court reversed the final order of Appellee without passing upon the coinstitutional issues (R. 187-189).

Appellee thereupon appealed to the Supreme Court of Illinois which reversed the decision of the Circuit Court, 169 N. E. 2d 78. Thereafter Appellant's petition for rehearing raising the above constitutional issues in the light of the opinion of the Supreme Court of Illinois (R. 208), was denied. On January 12, 1961, the Supreme Court of Illinois issued its certificate that in rendering its judgment it was "necessarily confronted with said constitutional issues and said judgment necessarily passed on those issues . . ." (R. 219) (Appendix D). The jurisdictional requirements for purpose of appeal under 28 U. S. C., Section 1257 (2) are met under the principle of care such as Central Greyhound Line, Inc. v. Mealey, 334 U. S. 653, 655, and Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282, 288-290.

FACTUAL BACKGROUND.

Appellant, Complete Auto Transit, Inc., a Michigan corporation, as a foreign corporation is authorized to do and does business in the State of Missouri. It has conducted business in Missouri since 1938 delivering automobiles from the General Motors Assembly Plant at St. Louis to points in other states under authority granted by that State (R. 118).

In the conduct of its Missouri business Complete utilizes a 15 acre storage facility which it owns and another 15 acre terminal facility which it leases (R. 119). Local and state property taxes are paid in Missouri on this property (R. 122).

Complete operates approximately 500 motor vehicles garaged and maintained at St. Louis which make deliveries of Chevrolets in various states returning to St. Louis (R. 119). The State of Missouri issues titles for these motor vehicles in Complete's name at its St. Louis address (R. 121). Complete's required to pay the same registration tax and affix the same license plates to such vehicles as all other residents of Missouri (R. 145). The vehicles are lettered in Complete's name with its St. Louis address (R. 144) and it pays city license taxes and motor fuel taxes (R. 139).

Complete's Missouri business is conducted as an autonomous self-contained unit (R. 118). Its St. Louis office keeps its own records, makes up its own payrolls, employs and discharges its own personnel, conducts its own labor negotiations, keeps its own bank account in a St. Louis bank, and dispatches the motor vehicles operated out of said terminal (R. 118-121).

The Missouri office uses its own stationery showing only its St. Louis street address, procures its own operating

authority, motor vehicle registration and license plates, pays all Missouri taxes in Missouri, the same as Missouri residents (R. 117-120). As to the privilege of conducting its business in Missouri, Complete, like other corporations in Missouri, pays the state corporate franchise tax (R. 139) and is recognized by the State of Illinois as having "a principal office" in Missouri (R. 101).

Appellant was precluded by the Hearing Officer from showing that in all respects the aforesaid relative size and activities of its St. Louis office caused it to be treated legally as a resident of Missouri by the State of Missouri (R. 140-142).

Appellant does no intrastate business in, and maintains no agents, offices or terminals in Illinois; it operates as a contract carrier on highways located in Illinois exclusively in interstate commerce.

Appellant, of course, has offices in Michigan, however, these are factually smaller than its St. Louis operation and have far fewer vehicles assigned. Appellant's Michigan office utilizes only 40 some vehicles (R. 63), whereas the St. Louis office utilized 431 tractors and 437 trailers (R. 167).

Appellant, in addition, has offices in Ohio and Georgia serving General Motors assembly plants there in the same manner as at St. Louis (R. 111). With the exception of deliveries in Missouri, Michigan, Ohio and Georgia from offices in those states, Complete's movements are exclusively in interstate commerce.

Commencing with the inception of its business in Missouri, Complete's Missouri registered motor vehicles were treated by Illinois in the same class as the Missouri licensed vehicles of other persons (R. 145). A reciprocity agreement executed in 1943 between Missouri and Illinois

confirmed and continued this classification (R. 124). Appellee's final orders denying the 1958 and 1959 applications for reciprocity registration of Missouri licensed equipment reversed this treatment and set Complete in a separate class without any factual change in its above described corporate operations.

THE FEDERAL CONSTITUTIONAL QUESTIONS ARE SUBSTANTIAL.

Under well established constitutional principles a state legislating on a subject must in practice apply such legislation equally and without discrimination to all those thereby affected. As applied by Appellee against Complete the Illinois statute in question denies Complete equal treatment with other foreign corporations and discriminates against it with respect to Illinois residents including both Illinois and foreign corporations.

I.

As applied by Appellee the statute requires Complete to pay the Illinois Motor Vehicle Tax on all its Missouri registered vehicles operated exclusively in Illinois in interstate commerce. Such vehicles, in the first instance, are registered in, and the applicable Missouri Motor Vehicle Tax paid, because Complete's Missouri operations are in all respects factually the same as any other Missouri resident.

Complete's operations since the inception at St. Louis in 1938 have been as an autonomous unit (R. 118). In conducting its Missouri business it owns and leases large tracts of real estate and substantial amounts of personal property. It is qualified to do business in Missouri and pays the corporate franchise tax for such privilege. It

holds intrastate operating authority to deliver property in Missouri (R. 155).

It pays local and state property taxes on its Missouri property city license taxes and motor fuel taxes.

Complete, though a foreign corporation, is, in fact and law, a person, or resident, in Missouri and entitled to the same rights, privileges and treatment in Illinois, as other corporations or persons carrying on the same operations in Missouri, **Southern R. Co. v. Greene**, 216 U. S. 400, 30 S. Ct. 287.

There is no factual basis on which Complete's Missouri operations can be distinguished from those of any other Missouri resident. Yet under the action of Appellee a Missouri corporation with the same or less business in Missouri would not be subjected to the Illinois tax, nor would a foreign corporation with only one other place of business, to wit: Missouri operating the same or fewer Missouri registered vehicles be so subjected. Appellant, however, operating Missouri registered vehicles in exactly the same manner as such other persons is subjected to said tax by Appellee.

In sustaining Appellee's action the decision of the Illinois Supreme Court placed Complete in a special class, without the same benefits and privileges as residents of Missouri, or other foreign corporations in Missouri, operating in exactly the same manner. The decision requires Complete, who having once paid the tax to Missouri, which state treats it as a resident, to again pay the tax to Illinois, although Appellant's business in Illinois is exclusively interstate. This decision denies Complete the benefits and privileges extended by Illinois to other corporations doing business in Missouri in the same manner.

Such a distinction between Complete and other corporations denies it equal protection of the laws. ". . . the

equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, ...", **Louisville Gas & Electric Co. v Coleman**, 277 U. S. 32, 37, 48 S. Ct. 423, 425. Such a distinction also denies "complete due process of law. . . . . due process of law and the equal protection of laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government . . .", **Duncan v. State**, 152 U. S. 377, 379, 14 S. Ct. 570; **Barbier v. Connolly**, 113 U. S. 27, 5 S. Ct. 357.

While this court has permitted reasonable classification of motor carriers for tax purposes based on highway use it has struck down distinctions not based on such use. In **Quaker City Cab Co. v. Commonwealth of Pennsylvania**, 277 U. S. 389, 48 S. Ct. 553, a tax was imposed if the carrier was a corporation, but not if it were an individual or partnership. In striking down the tax as construed and applied by the state court, this court wrote, 48 S. Ct., supra, p. 555:

> ". . . incorporated operators are taxed, while . . . natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification, to be consistent with the equal protection clause, must be based on a real and substantial difference having reasonable relation to the subject of the legislation."

Here the imposition of the tax is completely unrelated to highway use. It would be imposed, as applied by Ap-

pellee, whether Complete had one motor vehicle registered in Missouri or one thousand. At the same time other corporations or persons operating Missouri licensed equipment in the same manner in interstate commerce in Illinois would be exempt whether they had one vehicle or one thousand. Such a distinction based solely on the character of the owner of the vehicles is wholly arbitrary. "But the constitutional guaranty of equal protection of the laws is interposed against discriminations that are entirely arbitrary", **Smith v. Cahoon**, 283 U. S. 553, 556, 51 S. Ct. 582, 587; **Duncan v. Missouri**, 152 U. S. 377, 14 S. Ct. 570; **Barbier v. Connolly**, 113 U. S. 27, 5 S. Ct. 357; **LaPorte et al. v. Bitker**, 55 F. Supp. 882. In the Smith case a statute drawing a distinction between carriers solely on the character of the operator unrelated to any differences in operations was held to violate equal protection of the law.

A similar rule has been long applied to rail carriers. Gulf, C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, 17 S. Ct. 255. In Southern Railway Company v. Greene, 216 U. S. 400, 30 S. Ct. 287, a state statute imposing a tax on a railroad's doing business in a state, if they were foreign corporations, but exempting them therefrom on the same business, if domestic corporations were struck down because, "The fact is that both corporations do the same business in character and kind . . . to tax (the one) . . . by a different . . . rule than (the other) . . . for the same privilege is a denial of the equal protection of the laws . . . ", Southern R. Co., supra, 30 S. Ct. 291.

If it be suggested that Complete's operations in Michigan justify the arbitrary discrimination made against its Missouri operations, the short answer to this is that the operation of Complete's Michigan registered vehicles is entirely unrelated to the operation of its Missouri vehicles and Appellee treats such Michigan operations sepa-

rately in any event. Appellee, on the other hand, can point to no factors justifying different treatment of Complete's Missouri licensed vehicles than that accorded other foreign corporations, either Missouri or otherwise, doing business in the same manner in Missouri.

It is clear that mere classification is not enough. It must be founded on some reasonable basis. No distinction in fact exists between the Missouri registered vehicles operated by Complete in interstate commerce in Illinois, upon which Appellee pays the tax, and other such Missouri registered vehicles operated by others in interstate commerce in Illinois, which Appellee exempts. Equal protection, however, Hayes v. Missouri, 120 U. S. 68, 71, 7 S. Ct. 350 is bottomed on the ground that it

> ". . . requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed."

This is the rule today, Hartford Steam Boiler Insp. & Ins. Co. v. Harrison, 301 U. S. 459, 57 S. Ct. 838; Skinner v. Oklahoma, 316 U. S. 535, 62 S. Ct. 1110; Morey v. Doud, 354 U. S. 457, 77 S. Ct. 1344. The required equal treatment is denied Complete, however, by Appellee.

As applied by Appellee the statute requires Complete to pay the tax in Illinois (on equipment on which a tax is already paid in Missouri) without extending to Complete the right accorded a resident corporation of the State of Illinois of operating said vehicles on reciprocal exemptions in sister states. Under the existing agreement between Illinois and Missouri a resident Illinois corporation paying the tax in Illinois can operate such vehicles in Missouri in interstate commerce without payment of the tax to Missouri. Appellant, however, must pay both states and is thereby denied equal treatment

with resident Illinois corporations not only with respect to Missouri, but with respect to all other states which extend reciprocal privileges to Illinois. Obviously this favors Illinois residents at the expense of foreign corporations, such as Appellant, engaged exclusively in interstate commerce.

The magnitude of this discrimination may be judged from the fact that Illinois had in effect reciprocity agreements exempting Illinois registered vehicles in 40 states, including the states of Arkansas, Iowa, Kansas, Nebraska, Oklahoma, and Texas in which Complete operates its Missouri (and by Appellee's action) Illinois registered vehicles (Appendix E). These states which have contracted with Illinois have reciprocity laws substantially the same as that of Missouri and Illinois. Illinois has thus subjected Complete to a tax for which it receives none of the benefits accorded Illinois residents or domesticated corporations for payment of exactly the same tax.

The right of Illinois to secure the benefit of an exemption from taxation in 40 other states of vehicles registered and taxed in Illinois is undoubted. The decision here challenged, however, permits Appellee to impose the same tax on Complete, but denies it the benefits. Complete, under the decision, although operating motor vehicles in Illinois is neither incorporated in that state nor does it have an office therein. Thus although operating motor vehicles in the same manner and paying the same tax therefor, it is denied the exemption on such vehicles applicable thereto on similar vehicles operated in the 40 other states by domestic or domesticated corporations.

The purpose of the exemption granted "non resident owners" . . . "owning any foreign registered vehicle . . ." as therein set forth, Sec. 3-402 B is to secure to Illinois registered vehicles "exemptions . . . of a similar kind . . .

as extended to vehicles from such jurisdictions . . .", Sec. 3-402 B-3 (b).

Exclusion of Complete's vehicles, if registered in Illinois, from the exemptions generally accorded such vehicles in other states in no wise effectuates the purpose of securing exemptions for Illinois registered vehicles. In fact, it is directly contrary to such purpose.

Compare two foreign corporations organized in a sister state operating the same number of vehicles in interstate commerce in Illinois and other states. The one has an office in Illinois and nowhere else. The other has offices in various states, its Illinois office is the same size as that of the first corporation, but smaller than its offices in other states, say Michigan and Missouri. As applied by Appellee it pays the Illinois tax on its vehicles, but not being an Illinois corporation or having its "principal office" in Illinois, it receives none of the vehicle registration exemptions extended such other corporations. Each pays the same tax per vehicle for vehicles operated in interstate commerce in Illinois, but the former receives vehicle privileges of exemption in 40 other states on its Illinois vehicles while the latter does not.

Therefore, "The Act in its practical operation does not require like fees for equal privileges held by foreign corporations in (Illinois) under the same circumstances. . . . Such classification is not based on anything having relation to the purpose for which it is made . . .," Air-Way Electric Appliance Corporation v. Day, 266 U. S. 71, 84, 85, 45 S. Ct. 12, 15.

The fact that Complete has also paid a tax on the same vehicles to Missouri, or has multiple places of business unrelated to its Missouri operations and vehicles, does not support this result. Equal protection requires that it receive like treatment not only "in the liabilities imposed,"

but also "in the privileges conferred," Hayes v. Missouri, supra, p. 71. As applied, the Act favors Illinois domestic corporations and domesticated foreign corporations at the expense of foreign corporations engaged exclusively in interstate commerce.

Appellant does an interstate business in every state in the United States and in several has a principal office at which its motor vehicles are stationed and from which they originate. There are numerous motor carriers such as Appellant which also operate from several states and into and through all other states exclusively in interstate commerce. Therefore, a decision in this appeal will likewise effect those motor carriers.

The effect of the decision of the Illinois Supreme Court will require Appellant to pay the motor vehicle tax in each state in which it operates even though the operation is exclusively interstate. A full flow of commerce among states will no longer prevail and the payment of the tax to every state will result in an economic barrier to Appellant and its trade and increase the transportation cost to the automobile manufacturers, and, of course, result in higher cost to the ultimate consumer. The effect may readily be recognized when a tax of $300.00 to $500.00 is assessed upon Appellant by each state for each of its 2,500 motor vehicles.

Appellant therefore asserts that the federal questions presented by this appeal are substantial and that they are of public importance.

CONCLUSION.

Verily the plight of Appellant in Illinois is that of a man without a country. Determined not to be a resident of Missouri, its Missouri vehicles are subjected to a tax not

imposed on Missouri vehicles operated in Illinois in the same manner by other foreign corporations doing business in Missouri. On the other hand, payment of the tax on such vehicle to Illinois does not domesticate it in that state so as to entitle it to the substantial privileges from taxation received in exchange for such payment by domestic or domesticated Illinois corporations. A matter of first impression is presented calling for exercise of the Court's jurisdiction.

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APPENDIX A.

On May 18, 1960, the following judgment was entered by the Supreme Court of Illinois in the above cause:

This appeal is from a judgment of the circuit court of Sangamon County which reversed an administrative order of the defendant, Secretary of State, and directed him to enter an order granting plaintiff's application for reciprocity plates for its Missouri registered vehicles. The case relates to revenue.

The plaintiff is a Michigan corporation engaged in the business of transporting new automobiles from the factory to the dealer. It has an exclusive contract with the General Motors Corporation and maintains six terminals near the various assembly plants of that corporation. Two of the terminals are in Michigan, two in Georgia, one in Ohio, and one in Missouri.

In July of 1958 the plaintiff applied for the issuance of Illinois reciprocity plates for some 431 of its Missouri registered truck-tractors, under the provisions of section 3-402 (B) (1) of the Illinois Motor Vehicle Law. [Ill. Rev. Stat. 1957, chap. 95½, par. 3-402 (B) (1).] This section provides:

"A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the condition that such vehicle at all times when operated in this State is duly registered

in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner."

The application was denied and plaintiff sought a hearing under the provisions of section 2-117 of the Illinois Motor Vehicle Law. (Ill. Rev. Stat. 1957, chap. 95½, par. 2-117.) The denial of a similar application made in 1959 was also reviewed at the administrative hearing. The defendant affirmed the denial of both applications on the ground that the Missouri registered vehicles were not registered in the State of the "owner's residence" and for the further reason that there was no reciprocity agreement between the States of Illinois and Missouri. Plaintiff thereupon filed its complaint for judicial review in the circuit court of Sangamon County. The court found that plaintiff had a residence in the State of Missouri during the years in question and that there was a reciprocity agreement in force between the States of Illinois and Missouri during that period.

The principal question is whether plaintiff is a resident of Missouri within the meaning of section 3-402 (B) (1). Four jurisdictions with statutory provisions similar to section 3-402 (B) (1) have held that the place of residence of a corporate owner of a motor vehicle is where the corporation is incorporated. (State v. Garford Trucking, Inc., 4 N. J. 346; Western Express Co. v. Wallace, 144 Ohio St. 42; Hilburn v. Herrin Transportation Co. [Tex. Civ. App.], 197 S. W. 2d 149; Transport Rentals, Inc., v. Carpenter, 325 S. W. 2d 745.) The Appellate Court of Missouri has also held that the place of residence of a corporate owner of a motor vehicle may be where the principal place of

business is located although it is incorporated in another State. (State v. Tustin, 322 S. W. 2d 179.) These and many more cases dealing with various definitions of residence of a corporation have been cited by plaintiff and defendant.

The legislature has, however, in section 1-101 of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, chap. 95½, par. 1-101), provided that "The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires." A resident corporation is defined in section 1-155 (chap. 95½, par. 1-155) as being a corporation incorporated under the laws of the State of Illinois or having its principal place of business in this State. The plaintiff correctly asserts that this definition of which corporations are residents of Illinois does not specifically define a nonresident corporation's place of residence. We are of the opinion nevertheless that this section reveals the legislature's conception of corporate residence as that term is used in the Illinois Motor Vehicle Law.

The plaintiff next contends and the trial court found that a corporation can have more than one principal place of business and that plaintiff has a principal place of business in Missouri. We are of the opinion that the legislature intended to define but one business location by stating "the principal place of business."

The question of where a corporation's principal place of business is located is necessarily one of fact. The defendant found in the administrative hearing that plaintiff's principal place of business is located in Michigan and this finding is not disputed. Thus, since the plaintiff is not incorporated under the laws of the State of Missouri and does not have its principal place of business in that

State, it is not a resident of the State of Missouri within the meaning of section 3-402 (B) (1).

It is then argued by the plaintiff that it is entitled to reciprocity plates for its Missouri registered vehicles under a reciprocity agreement between the States of Missouri and Illinois dated November 21, 1943. The agreement provides that any corporation which has its principal place of business in either Illinois or Missouri shall in addition to such persons as fall within the common and legal definition of the word "resident" be deemed a resident of the State in which such principal place of business was so situated. This agreement does not authorize the defendant to grant reciprocity to the plaintiff on its Missouri registered vehicles because the plaintiff's principal place of business, as determined in the administrative hearing, is not located in Missouri.

The judgment of the circuit court of Sangamon County is reversed.

APPENDIX B.

Pertinent parts of the Illinois Motor Vehicle Law, Illinois Revised Statutes, 1957, Chapter 95½, Sec. 3-402, are as follows:

"A. Every motor vehicle, trailer, semi-trailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:"

"B. Reciprocity. Any motor vehicle, trailer, semi-trailer or pole trailer need not be registered under this Act provided the same is operated in accordance with the following provisions and any rules and regulations promulgated pursuant thereto:

(1) A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the condition that such vehicle at all times when operated in this State is duly registered in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner."

B. "(3) (a) In order to effectuate the purposes of this Act, the Secretary of State of Illinois is empowered to

negotiate and execute written reciprocal agreements or arrangements with the duly authorized representatives of other jurisdictions, including States, districts, territories and possessions of the United States, and foreign states, provinces, or countries, granting to owners or operators of vehicles duly registered or licensed in such other jurisdictions and for which evidence of compliance is supplied, benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees or other charges imposed with respect to the ownership or operation of such vehicles by the laws of this State except the tax imposed by the Motor Fuel Tax Law, approved March 25, 1929, as amended, and the tax imposed by the Use Tax Act, approved July 14, 1955, as amended."

B. (3) "(b) Such reciprocal agreements or arrangements shall provide that vehicles duly registered or licensed in this State when operated upon the highways of such other jurisdictions, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as extended to vehicles from such jurisdictions in this State."

APPENDIX C.

Pertinent parts of the Missouri Motor Vehicle Law, R. S. Mo. 1949, Chapter 301, are as follows:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

APPENDIX D.

CERTIFICATE OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

Upon Motion of Complete Auto Transit, Inc., a Corporation, Plaintiff-Appellee in this Court in this cause, it is hereby certified and made a part of the record of this cause and of the judgment of this Court denying Plaintiff-Appellee's Petition for Rehearing heretofore entered, that Plaintiff-Appellee, in its original Petition filed with the Defendant-Appellant under the provisions of the Administrative Review Act and again in its Complaint filed in the Circuit Court of Sangamon County, Illinois, pursuant to the provisions of the Administrative Review Act, Plaintiff-Appellee raised issues involving the Fourteenth Amendment to the Constitution of the United States; that the Circuit Court of Sangamon County, Illinois, found it unnecessary to decide said issues but held for the Plaintiff on other grounds.

It is further certified that, upon the appeal by the Defendant-Appellant, Plaintiff-Appellee had no adverse decision from which to appeal involving said constitutional issues. It is further certified that said Plaintiff-Appellee at its earliest opportunity in its Petition for Rehearing filed in this Court set up said constitutional issues as follows:

> "The Court's construction of section 1-155 and section 3-402 (B) of the Illinois Motor Vehicle Law results in creating an arbitrary and unreasonable classification of foreign motor truck corporations. The discriminative effect of such construction infringes the plaintiff's constitutional rights as being violative of Article IV, section 22 and Article II, section 14 of the Illinois Constitution and the 14th

Amendment of the U. S. Constitution in that plaintiff would not be extended the same privileges and immunities as other Illinois residents including foreign motor truck corporations with the principal place of business located in Illinois. Furthermore, this construction would deprive the plaintiff of property without due process of law in violation of the 14th Amendment to the U. S. Constitution and Article II, section 2 of the Illinois Constitution as it constitutes the levying of a tax based on arbitrary classification.

"Plaintiff raised these constitutional issues at the earliest opportunity in plaintiff's Petition filed with defendant Secretary of State under the provisions of the Administrative Review Act (Abst. 61, 62). These questions were preserved in the Lower Court by reason of the allegations in plaintiff's Complaint filed pursuant to the Administrative Review Act (Abst. 8). The Lower Court, however, did not reach them as the Court held for the plaintiff on other grounds (Abst. 81, 83), and it was not necessary, therefore, for that Court to pass on any constitutional issue.

"Article IV, section 22 of the Illinois Constitution prohibits the General Assembly from passing local or special laws granting to any **corporation**, association or individual any special or exclusive privilege, immunity or franchise whatever. The purpose of this provision is to prevent the enlargement of the rights of one or more persons and the impairment of, or discrimination against, the rights of others (Gaca v. City of Chicago, 103 N. E. 2d 617, 411 Ill. 146).

"As demonstrated under (C) in plaintiff's petition, the Court's construction of section 1155 creates an arbitrary and unreasonable classification of foreign motor truck corporations by giving the literal meaning of 'one' to the word 'the.'

"The discrimination effect of the Court's interpretation is readily apparent in plaintiff's situation.

Here, plaintiff doing an exclusively interstate business, maintaining no place of business or carrying on any business in Illinois whatsoever if required to purchase and pay the full amount for license plates will be paying the same tax as any other Illinois resident. Yet, plaintiff would not be considered or deemed to be a resident of Illinois under section 1-155 as the Court has construed and applied it to plaintiff. Thus, plaintiff travelling in sister states would not be considered an Illinois resident entitled to the reciprocal benefits and privileges extended to Illinois residents by the sister states as such benefits and privileges are only extended to residents of each state. Hence, plaintiff although paying the same amount for license taxes as any other Illinois resident would be required to pay additional amounts for license taxes in sister states whereas the foreign motor truck corporation with 'the principal place of business' in Illinois; being an Illinois resident, would not be required to pay any additional amounts for license taxes in sister states as it would be entitled to the privileges and benefits of reciprocity extended to the residents of Illinois under the reciprocity statute of the sister state.

"In People v. City of Chicago, 337 Ill. 100 at p. 105, this Court stated the rule forbidding discrimination in violation of constitutional guaranties:

'. . . A class may not be created by the arbitrary declaration of an act of the legislature and endowed with special legislative favors or subjected to special burdens. The classification, in such instances, must be based on a substantial and reasonable distinction in the situation and circumstances of the individuals who are embraced therein from those not so included, and the ground of such classification and distinction must have relation in reason and in principle to the privileges or burdens proposed to be granted to or

laid upon such individuals as a class by the proposed legislation. (**Berry v. City of Chicago**, 320 Ill. 536; **Bagdonas v. Liberty Land and Investment Co.**, 309 id. 103.) An act which arbitrarily discriminates against one class in the transaction of a lawful business or occupation and leaves unaffected others engaged in a manner not distinguishable in character from that in which the class discriminated against is employed is in contravention of constitutional guaranties. (**Bailey v. People**, 190 Ill. 28.)'

"We respectfully submit that the classification and distinction here made between members of the same class, namely, foreign motor trucking corporations, conferring on one the status of a resident based on 'the principal place of business' being located in Illinois and denying it to another foreign motor trucking corporation having a place of business in Illinois is unreasonable and arbitrary as the ground of such classification has no relation to the use made of the highways by the members of the same class. The classification also results in granting to the foreign trucking corporation with 'the principal place of business,' a privilege, as an Illinois resident, to enjoy the reciprocal benefits of travel without paying any additional amounts for license taxes in sister states while denying the privilege to another member of the same class in the same situation."

It is further certified that the judgment of this Court denying Plaintiff-Appellee's Petition for Rehearing necessarily was confronted with said constitutional issues and said judgment necessarily passed on those issues and held that Section 1-155 did not violate the Fourteenth Amendment to the Constitution of the United States.

APPENDIX E.

The following quotation is part of commentary prepared and written by Mr. Samuel Young, Special Assistant Attorney General, representing Appellee, Secretary of State of Illinois, appearing in Smith-Hurd Illinois Annotated Statutes, Ch. 95½, p. 139:

"At the present time, the state of Illinois has reciprocity agreements with forty of the forty-eight states. Illinois does not at the present time have reciprocity with the states of Utah, Colorado, Oregon, New Mexico, Idaho, Arizona, Nevada, or Wyoming."

FILE COPY

Office Supreme Court, U.S.
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MAR 21 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 750

COMPLETE AUTO TRANSIT, INC., a corporation,
Appellant,

vs.

CHARLES F. CARPENTIER, Secretary of State of the State of Illinois,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT APPEALED FROM. CERTIFICATE OF SERVICE.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 750

COMPLETE AUTO TRANSIT, INC., a corporation,

Appellant,

vs.

CHARLES F. CARPENTIER, Secretary of State of the State of Illinois,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT APPEALED FROM. CERTIFICATE OF SERVICE.

Appellee, Charles F. Carpentier, Secretary of State of Illinois, moves this Court to dismiss this appeal or to affirm the judgement appealed from, on the grounds that:

I.

There is no substantial Federal question presented.

II.

The Federal questions sought to be reviewed were not timely or properly raised, nor expressly passed on.

III.

The judgment of the Supreme Court of Illinois, below, rests on an adequate non-Federal basis.

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
Counsel for Appellee.

SAMUEL H. YOUNG,
RAYMOND S. SARNOW,
Assistant Attorneys General,
Of Counsel.

STATEMENT OF BACKGROUND

The Illinois Motor Vehicle Law (Ill. Rev. Stat., Ch. 95½) requires motor vehicles, as therein defined, to be registered (licensed) and the payment of registration (license) fees for such registration before such motor vehicle may be operated over the highways of Illinois (Ill. Rev. Stat., Ch. 95½; Sec. 3-401). Section 3-402 of the Illinois Motor Vehicle Law exempts from registration certain vehicles under certain conditions. We are concerned in this case with one of the exemptions from registration set out in Section 3-402B(1) as follows:

> "Reciprocity. Any motor vehicle, trailer, semi trailer or pole trailer need not be registered under this Act provided the same is operated in accordance with the following provisions and any rules and regulations promulgated pursuant thereto:
>
> (1) A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the condition that such vehicle at all times when operated in this State is duly registered in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner.

> Every nonresident, including any foreign corporation carrying on business within this State and owning and regularly operating in such business any motor vehicle, trailer or semi-trailer within this State, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State."
>
> . . . . . .

For convenience the privilege afforded to non-residents under Sec. 3-402B(1) will hereinafter be referred to as "reciprocity".

The appellant, COMPLETE AUTO TRANSIT, INC. (hereinafter sometimes called "Auto Transit"), contends that it is entitled to operate its Missouri-registered motor vehicles over the highways of Illinois, pursuant to the provisions of the statute above quoted, without registration or the payment of registration fees to the State of Illinois.

Auto Transit, is a Michigan corporation engaged as a "for hire" carrier in the transportation of Chevrolet automobiles for General Motors Corporation.

Auto Transit owns and leases property in the State of Missouri where it operates a large terminal, services, garages, and maintains motor vehicles, and registers the vehicles in question. In addition, Auto Transit maintains similar terminal facilities in Ohio and Georgia, in which states, it also registers vehicles.

Auto Transit, in the early part of 1958, filed an application with the appellee requesting waiver of registration fees (hereinafter called "reciprocity") with respect to 40 vehicles registered (licensed) in the State of Michigan. In this application Auto Transit stated that "the principal office" of Auto Transit was in Detroit, Michigan. In addition, employees of Auto Transit testified that all of the offi-

cers and directors of Auto Transit maintain their residence in the State of Michigan; that the corporate office of Auto Transit is in Michigan as a matter of convenience to the automobile industry; that the Michigan office acts as a clearing house for information; that the officers and directors of Auto Transit delegate authority to the branches to hire personnel, make up payrolls, and purchase and own motor vehicles; that the Missouri terminal is a branch office of Auto Transit; that all contracts of Auto Transit are executed in Michigan; that the branch manager in Missouri, is subject to the direction of the officers in Michigan; and that Auto Transit is qualified to do business as a foreign corporation in Missouri.

Auto Transit voluntarily withdrew its application for "reciprocity" with respect to its Michigan-registered (licensed) motor vehicles, and filed a new application in 1958, and a similar application in 1959, requesting "reciprocity", under Sec. 3-402B(1) of the Illinois Motor Vehicle Law, with respect to its Missouri-registered (licensed) motor vehicles operating out of its Missouri terminal.

The appellee refused and denied "reciprocity" (waiver of registration fees) with respect to the Missouri-registered (licensed) motor vehicles of Auto Transit on the basis that such vehicles were not registered (licensed) in the State of "residence" of Auto Transit as required by Section 3-402B(1), above quoted.

Auto Transit filed an action in the Circuit Court of Sangamon County, Illinois, for judicial review of the administrative decision of the appellee, claiming that it was entitled to "reciprocity". The Circuit Court of Sangamon County reversed the administrative order of denial of the appellee and directed the appellee to grant "reciprocity" to Auto Transit's Missouri-registered motor vehicles for the years 1958 and 1959.

A copy of the opinion of the Circuit Court of Sangamon County is set out in Exhibit B. It is pointed out that the Circuit Court of Sangamon County did not rule on any question involving the United States Constitution and Auto Transit failed to request any such ruling.

Thereafter appellee appealed the order of the Circuit Court of Sangamon County to the Supreme Court of Illinois. The Supreme Court of Illinois reversed the Circuit Court of Sangamon County and affirmed the administrative order of the appellee. A copy of this opinion is attached as Exhibit A. It is pointed out that neither in briefs nor oral arguments of Auto Transit was there any discussion or issue with respect to the United States Constitution, and, further, nowhere in said opinion did the Court rule with respect to any question involving the United States Constitution.

Thereafter Auto Transit filed a Petition for Rehearing which was denied, by the Supreme Court of Illinois, summarily, and without any express ruling with respect to any question involving the United States Constitution.

Thereafter on January 12, 1961, Auto Transit, without notice to the appellee, did obtain the execution of a "Certificate of the Supreme Court of the State of Illinois", a copy of which certificate is set out in the "Jurisdictional Statement" of Auto Transit. This certificate was signed by one Justice of the Illinois Supreme Court without the benefit of any hearing or argument of appellee.

BRIEF

I.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED.

Auto Transit, a Michigan corporation, with "the principal office" of such corporation being located in Detroit, Michigan, registers its motor vehicles in the State of Missouri and seeks to use such motor vehicles over the highways of the State of Illinois without the payment of any registration fees to the State of Illinois under the "reciprocity" provisions of the Illinois Motor Vehicle Law.

The State of Illinois has refused Auto Transit this privilege under the law of the State of Illinois in that Auto Transit does not fit within the "reciprocity" exemptions set out in Section 3-402 B (1) of the law. In particular, Auto Transit is refused this privilege because its motor vehicles are not licensed in the "state of residence" of Auto Transit.

There is a long history of court interpretation of the "residence" of a corporation. The general law on this subject is that a corporation is a "resident" of the state in which it is incorporated. (13 Am. Jur. *Corporation*, Sec. 148; 23 Am. Jur. *Foreign Corporations*, Sec. 34, *et seq.* and Volume 8 of Fletcher, Cyclopedia of Corporations.)

It is also true that states may vary such interpretation of "residence" by statutory enactment. The State of Illinois has seen fit in its own Motor Vehicle Law to define a "resident of Illinois", with respect to corporations, as including both a corporation incorporated under the laws of Illinois and a corporation, regardless of state of incorporation, with "the principal place of business of such corporation" in the State of Illinois. (Ill. Rev. Stat. 1959, Chapt. 95½, Sec. 1-155.)

The law of Missouri follows the general rule, and the Supreme Court of Missouri has expressly interpreted the term "resident" in the Motor Vehicle Laws of Missouri to mean, with respect to a corporation, that a corporation is a "resident" in the state of its incorporation. (*Transport Rentals, Inc.* v. *Carpenter*, 325 S. W. 2d 745, and *State of Missouri* v. *Tustin*, 322 S. W. 2d 179 (1959).)

The Appellee, administrator of the Illinois Motor Vehicle Law, found that "the principal place of business" of Auto Transit was in Michigan. This is a question of fact, and the finding of the Appellee with respect to this matter is not disturbed.

Auto Transit seeks to establish that it may have a "residence" in any state in which it has a terminal and garages and maintains its motor vehicles.

It is important to remember that the State of Illinois requires "all persons" using motor vehicles over the highways of Illinois to register their motor vehicles unless such motor vehicles are exempt from registration. The Illinois Motor Vehicle Law being a general registration act applying to anyone using the highways, and Auto Transit being a person seeking to exempt itself from such requirements, it is incumbent upon Auto Transit to come within the provisions of any exemptions in the law, if it seeks to avail itself of an exemption.

It is important to remember also that the State of Illinois has in the past and would continue in the future to grant "reciprocity" to Auto Transit if Auto Transit will register its vehicles in its "state of residence", to wit: The State of Michigan.

In the event that Auto Transit, for its own purposes, refuses to register (license) its motor vehicles in its "state of residence", it cannot complain about meeting the re-

quirements of registration imposed on all other persons so using the highways of Illinois.

It should also be pointed out that Auto Transit registers its motor vehicles in the State of Missouri since it does an "intrastate" business in the State of Missouri. It would therefore not be entitled to "reciprocity" in the State of Missouri with respect to such vehicles, if such vehicles were registered in Michigan.

It should also be pointed out that an alternative provision available to Auto Transit under the Illinois Motor Vehicle Law is the "proration" privilege set out in Section 3-402 B (2). Under "proration", Auto Transit need only register a percentage of its motor vehicles with the State of Illinois based upon the miles traveled in Illinois compared to miles traveled in all other states, with respect to such motor vehicles. Such proration provisions were specifically placed in the Illinois Statutes to afford relief to interstate motor carriers who had been complaining about state taxation of their motor vehicles, based on residence, for the use of the highways of such state.

Auto Transit has seen fit not to register its vehicles in Michigan, since it uses such motor vehicles in intrastate commerce in the State of Missouri and is therefore required by Missouri law to register such motor vehicles in the State of Missouri, yet it is now asking this Court to require the State of Illinois to extend the privileges of "reciprocity" to Missouri-registered motor vehicles of Auto Transit on the basis that to do otherwise would deny to Auto Transit "due process" and the "equal protection" guarantees of the Fourteenth Amendment to the United States Constitution.

Illinois is not depriving Auto Transit of its "property" without due process of law. The registration provisions of the Illinois Motor Vehicle Law would be valid were there no

privileges of "reciprocity" granted to non-residents so long as the charge made for the use of the highways has some fair relationship to the use of the highways for which the charge is made." (*McCarroll* v. *Dixie Greyhound Lines*, 309 U. S. 176, 84 L. Ed. 683, 60 S. Ct. 504.) It is within the police power of the State of Illinois to exact a tax for the use of the highways which bears a reasonable relationship to the use of the highways and which is not discriminatory in that the tax is increased by reason of the interstate operations of Auto Transit. (*Bode* v. *Barrett*, 344 U. S. 583, 97 L.Ed. 567, 73 S. Ct. 468, 1952.)

The objections of Auto Transit with respect to "due process" are without substance. The State of Illinois has the power to tax for the use of its highways and the registration fees involved are not being used for a "different and forbidden power", *Bode* v. *Barrett*, *supra*.

Denial to Auto Transit of the privilege of "reciprocity", in the circumstances of this case, does not deny to Auto Transit the "equal protection of the laws". The provisions of Section 3-402B(1) pertaining to reciprocity are general in their application with respect to non-residents and such privilege is extended uniformly to such non-residents. The classifications provided in Section 3-402B(1) are reasonable and proper and within the power of the Legislature of the State of Illinois to prescribe.

Auto Transit has seen fit to register its motor vehicles, not in the State of Michigan where it is a resident, but in the State of Missouri and it has thereby voluntarily removed itself from the classification of non-residents otherwise entitled to reciprocity privileges under the Illinois Motor Vehicle Law. Illinois is not bound to make an exemption for Auto Transit or others similarly situated, who do not choose to bring themselves within the circum-

ference of the statute (*Storaasli* v. *Minnesota*, 283 U. S. 157, 51 S. Ct. 354, 75 L. Ed. 839). As the Court pointed out in *Broadway Express* v. *Murray*, 60 F. 2d 293, 301 (D. C. W. D. Okla. 1932):

> "The mere fact that a foreign truck is not or cannot be brought within the class benefited by the reciprocal provisions does not create a discrimination against it."

It is thus clear that the Fourteenth Amendment to the United States Constitution does not require the State of Illinois to extend the privilege of "reciprocity" for the benefit of all non-resident motor vehicles owners regardless of where the motor vehicles of such owners are registered.

This Court stated in *Hayes* v. *State*, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 579 (1886), as follows:

> "The Fourteenth Amendment of the Constitution of the United States * * * merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

The State of Illinois has extended the privilege of "reciprocity" uniformly to all non-resident persons, including Auto Transit. Registration fees vary throughout the United States ranging from a low of $20 to a high of $1,139. It is proper for Illinois to require "non-residents" to register their vehicles in their state of "residence" rather than in any state of their own choosing. The fact that Auto Transit has not seen fit to register its motor vehicles in the State of Michigan, but has chosen to register such motor vehicles only in the State of Missouri, can hardly be used to justify its assertion that it is being denied the "equal protection under the laws" or that there is no reasonable basis for the classification made by the State of Illinois.

The power of the State of Illinois to classify for the purposes of taxation "is of wide range and flexibility". (*Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1927).)

Inequalities which occasionally result in the application of tax laws do not defeat those laws, and absolute equality has never been held to be required by the "equal protection" clause of the Fourteenth Amendment (*Storaasli* v. *Minnesota, supra*). As stated in the case of *Barbier* v. *Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923 (1884):

> "* * * Special burdens are often necessary for general benefits * * * though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike on all persons and property under the same circumstances and conditions * * * Legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation, it affects alike all persons similarly situated, is not within the Amendment."

The reasoning of Brandeis, J. dissenting in *Dahnke-Walker Milling Co.* v. *Bondurant*, 275 U. S. 282, 66 L. Ed. 239, states the logical basis for dismissing this appeal:

> "If jurisdiction * * * can be obtained by the mere claim in words that a state statute is invalid, if so construed as to 'apply' to a given state of tax, the right to review will depend, in a large class of cases, not upon the nature of the constitutional cases involved, but upon the skill of counsel."

The judgment of the Supreme Court of Illinois, appealed from in this case, is in accord with the decisions of all of the courts of last resort of the other states that have considered this question. (See *State* v. *Garford Trucking Co.*, 16 A. L. R. 2d 1407, 72 A. 2d 851 (N. J.), *State* v. *Tustin*, 323 S. W. 2d 179 (Mo.), *Transport Rentals, Inc.* v. *Carpenter*, 325 S. W. 2d 745 (Mo.), *Western Express Co.* v. *Wallace*, 144 Ohio St. 612, 60 N. E. 2d 312 (Ohio).)

In addition, the reasoning of this Court in the cases of *Hendrick* v. *Maryland*, 325 U. S. 610, 35 S. Ct. 140, 59 L. ed. 385 (1914); and *Kane* v. *New Jersey*, 242 U. S. 160, 37 S. Ct. 30, 61 L. ed. 222 (1916); and *Hicklin* v. *Coney*, 290 U. S. 169; and *Bode* v. *Barrett*, 344 U. S. 583, 73 S. Ct. 468, 97 L. ed. 567 (1952), deal with the right of states to tax users of the highways of the States by such States.

It is therefore submitted that there is no substantial federal question presented by Auto Transit and the appeal should therefore be dismissed or the judgment below affirmed.

II.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT TIMELY OR PROPERLY RAISED NOR EXPRESSLY PASSED ON.

Appellant alleged issues involving the 14th Amendment to the Constitution of the United States in its administrative petition and subsequently in its Complaint filed in the Circuit Court. The Appellant, however, never argued, urged or otherwise asked the Circuit Court to pass on the constitutional questions. That the Circuit Court never passed on such questions is manifest from its Opinion (Appendix B). In the appeal of this case to the Supreme Court of Illinois, no issue involving a federal question was raised by the briefs of either party or mentioned in argument. It also was not expressly passed on by that Court as evinced by its Opinion below (Appendix A).

After receiving an adverse decision from the Illinois Supreme Court involving construction of the reciprocity provisions of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, Chapt. 95½, Para. 3-402 B (1)), Appellant belatedly, in its petition for rehearing, raised questions involving the Illinois Constitution and mentioned but did not urge issues under the 14th Amendment of the Constitution of the United States (Jurisdictional Statement—Appendix D). One Justice of the Illinois Supreme Court then, at the urging of Appellant, in an *ex parte* proceeding, held without notice to the Appellee, and for which there was no authority under the rules of procedure of that Court or the statutes of Illinois, certified (1) that the Appellant raised issues under the 14th Amendment of the Constitution of the United States at its earliest opportunity, and (2) that the Illinois Supreme Court was necessarily confronted with said constitutional

issues in denying Appellant's petition for rehearing in that it concluded that Section 1-155 (a Section defining "resident" in Illinois for purposes of the Illinois Motor Vehicle Law) of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, Chapt. 95½, Para. 1-155) did not violate the 14th Amendment of the Constitution of the United States. It is respectfully submitted that the certificate of the Illinois Supreme Court executed by one Justice thereof is an *ex parte* proceeding is not correct in its implication that Appellant has preserved its right to raise such issues before this Court.

The statement in the certificate that the Appellant raised constitutional issues involving the 14th Amendment at its earliest opportunity is misleading. It is settled under Illinois law that before the Supreme Court of Illinois will take jurisdiction on a direct appeal involving constitutional questions, such questions must be raised in the trial court, be urged, and be passed on there, and be properly preserved on appeal (e.g., *Group Securities, Inc. v. Carpentier*, 13 Ill. 2d 41 (1958)). These requirements were not met by Appellant (Appendix B). This appeal to the Supreme Court of Illinois was taken not because a constitutional issue was involved, but pursuant to Section 75 of the Illinois Civil Practice Act (Ill. Rev. Stat. 1957, Chapt. 110, Para. 75), which authorizes such action when the state is interested as a party or where the case relates to revenue. *It is readily apparent, therefore, that Appellant did not preserve its right to raise issues involving the Constitution of the United States before the Supreme Court of Illinois, and accordingly, they were not passed on by the Illinois Supreme Court* (Appendix A).

The certificate of the Illinois Supreme Court (Jurisdictional Statement—Appendix B), moreover, states that Section 1-155 of the Illinois Motor Vehicle Law (Ill. Rev. Stat.

1957, Chapt. 95½, Para. 4-155), defining "resident" for purposes of the Illinois Motor Vehicle Law was held not to have violated the 14th Amendment to the United States Constitution. Thus, in any event, the Illinois Supreme Court did not determine or expressly pass on the question of whether the reciprocity provisions of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, Chapt. 95½, Para. 3-402 B (1)) violated the 14th Amendment. It is this provision, not Section 1-155, to which constitutional objections are asserted by Appellant in this appeal.

At best, this certificate represents merely the opinion of one Judge of the Illinois Supreme Court. As a practical matter, the Illinois Supreme Court, if it had heard arguments of counsel for Appellee, may well have denied Appellant's petition for rehearing because the constitutional questions presented were not properly before it.

Constitutional issues such as those which Appellant attempts to raise at this juncture before the United States Supreme Court can hardly be said to have been timely or properly raised. This Court has consistently refused to entertain constitutional objections under such circumstances (*Duncan* v. *State*, 152 U. S. 377, 383, 14 S. Ct. 570, 38 L. ed. 485, 488 (1893)). Appellant's attempt to urge constitutional objections at this stage of these proceedings amounts to "a retrospective injection of a non-existent federal question". It is patently obvious that under the record of this proceeding, Appellant has not preserved its constitutional objections, and they have not been expressly passed on below (Appendix A).

III.

THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS, BELOW, RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

The decision below as evidenced by the Court's Opinion (Appendix A) was based solely on a construction of Illinois law. No federal questions were raised or passed on by the Illinois Supreme Court. The decision of the Court below lends itself to no other interpretation. It is a cardinal principle of jurisprudence, not requiring citation, that it is exclusively within the province of the highest tribunal of a state to construe with finality its statutes and that such a judgment so construing them is adequate.

CONCLUSION.

The *reductio ad absurdum* of Appellant's contentions before this Court, as before the Courts below, is that the State of Illinois should extend the privilege of the use of its highways to it without requiring registration of its motor vehicles in Illinois, so long as Appellant registers them in some other state of its choosing. Appellant is neither, as it contends, "a man without a country" (Jurisdictional Statement, Page 17) nor should it be "a man with many countries." Its "country" is Michigan and there it should register its vehicles if it wishes "reciprocity" for such vehicles using Illinois highways.

No novel questions of first impression are presented to this Court in this proceeding, and in fact, the permissible limits of regulation by a state of non-resident owned motor

vehicles using its highways in interstate commerce have been firmly established by this Court. The "reciprocity" provisions of the Illinois Motor Vehicles Law, here in question, clearly meet these requirements, though the Appellant has decided that it would be provident at this juncture to urge to the contrary. Accordingly, Appellee's Motion to Dismiss This Appeal or to Affirm the Judgment Appealed From should be allowed.

Respectfully submitted,

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APPENDIX A.

OPINION OF ILLINOIS SUPREME COURT APPEALED FROM
Docket No. 35597—Agenda 24—March, 1960

Complete Auto Transit, Inc., Appellee, v. Charles F. Carpentier, Secretary of State, Appellant

MR. CHIEF JUSTICE HOUSE delivered the opinion of the court:

This appeal is from a judgment of the circuit court of Sangamon County which reversed an administrative order of the defendant, Secretary of State, and directed him to enter an order granting plaintiff's application for reciprocity plates for its Missouri registered vehicles. The case relates to revenue.

The plaintiff is a Michigan corporation engaged in the business of transporting new automobiles from the factory to the dealer. It has an exclusive contract with the General Motors Corporation and maintains six terminals near the various assembly plants of that corporation. Two of the terminals are in Michigan, two in Georgia, one in Ohio, and one in Missouri.

In July of 1958 the plaintiff applied for the issuance of Illinois reciprocity plates for some 431 of its Missouri registered truck-tractors, under the provisions of section 3—402 (B) (1) of the Illinois Motor Vehicle Law. (Ill. Rev. Stat. 1957, chap. 95½, par. 3—402 (B) (1).) This section provides:

> "A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the

condition that such vehicle at all times when operated in this State is duly registered in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner."

The application was denied and plaintiff sought a hearing under the provisions of section 2-117 of the Illinois Motor Vehicle Law. (Ill. Rev. Stat. 1957, chap. 95½, par. 2—117.) The denial of a similar application made in 1959 was also reviewed at the administrative hearing. The defendant affirmed the denial of both applications on the ground that the Missouri registered vehicles *were not registered in the State of the owner's residence* and for the further reason that there was *no reciprocity agreement* between the States of Illinois and Missouri. Plaintiff thereupon filed its complaint for judicial review in the circuit court of Sangamon County. The court found that plaintiff had a residence in the State of Missouri during the years in question and that there was a reciprocity agreement in force between the States of Illinois and Missouri during that period.

The principal question is whether plaintiff is a resident of Missouri within the meaning of section 3—402 (B) (1). Four jurisdictions with statutory provisions similar to section 3—402 (B) (1) have held that the place of residence of a corporate owner of a motor vehicle is where the corporation is incorporated. (*State* v. *Garford Trucking, Inc.*, 4 N. J. 346; *Western Express Co.* v. *Wallace*, 144 Ohio St. 612; *Hilburn* v. *Herrin Transportation Co.* (Tex. Civ. App.), 197 S. W. 2d 149; *Transport Rentals, Inc.* v. *Carpenter*, 325 S. W. 2d 745.) The Appellate Court of Missouri has also held that the place of residence of a corporate owner of a motor vehicle may be where the principal place of business is located, although it is incorporated in another State. (*State* v. *Tustin*, 322 S. W. 2d 179.) These and

many more cases dealing with various definitions of residence of a corporation have been cited by plaintiff and defendant.

The legislature has, however, in section 1—101 of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, chap. 95½, par. 1—101,) provided that "The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires." A resident corporation is defined in section 1—155 (chap. 95½, par. 1—155) as being a corporation incorporated under the laws of the State of Illinois or having its principal place of business in this State. The plaintiff correctly asserts that this definition of which corporations are residents of Illinois does not specifically define a nonresident corporation's place of residence. We are of the opinion nevertheless that this section reveals the legislature's conception of corporate residence as that term is used in the Illinois Motor Vehicle Law.

The plaintiff next contends and the trial court found that a corporation can have more than one principal place of business and that plaintiff has a principal place of business in Missouri. We are of the opinion that the legislature intended to define but one business location by stating "the principal place of business."

The question of where a corporation's principal place of business is located is necessarily one of fact. The defendant found in the administrative hearing that plaintiff's principal place of business is located in Michigan and this finding is not disputed. Thus, since the plaintiff is *not incorporated* under the laws of the State of Missouri and *does not have its principal place of business in that State*, it is not a resident of the State of Missouri within the meaning of section 3—402 (B) (1).

It is then argued by the plaintiff that it is entitled to reciprocity plates for its Missouri registered vehicles under a reciprocity agreement between the States of Missouri and Illinois dated November 21, 1943. The agreement provides

that any corporation which has its *principal place of business* in either Illinois or Missouri shall in addition to such persons as fall within the common and legal definition of the word *"resident"* be deemed a resident of the State in which such principal place of business was so situated. This agreement does not authorize the defendant to grant reciprocity to the plaintiff on its Missouri registered vehicles because the plaintiff's principal place of business, as determined in the administrative hearing, is not located in Missouri.

The judgment of the circuit court of Sangamon County is reversed.

Judgment reversed.

APPENDIX B.

The Judgment Order of the Circuit Court of Sangamon County reversing the Order of Denial of the defendant, is as follows:

Order of the Circuit Court of Sangamon County, omitting caption and formal parts, is in words and figures, as follows:

"This above entitled cause having come on to be heard upon the Complaint of plaintiff and Answer of the defendant, with parties being represented by their respective attorneys and the court having heard the arguments of counsel and having examined the entire record as to all questions of law and fact presented by said record, and the court now being fully advised in the premises, the court, on Motion of plaintiff, pursuant to the Administrative Review Act (par. 275 (3), Ch. 110, Ill. Rev. Stats. 1957), Finds:

1. That it has jurisdiction of this cause and the subject matter thereof and jurisdiction of all the parties hereto.

2. That plaintiff is a foreign Corporation, organized under the laws of Michigan, and is authorized by the Interstate Commerce Commission to transport motor vehicles as a contract carrier for hire in interstate commerce in the States of Missouri and Illinois among others.

3. That plaintiff, a foreign Corporation, is qualified and authorized to do and does business in the State of Missouri; all the motor vehicles in question upon which plaintiff claim reciprocity and made application for reciprocity, were fully registered and licensed as a resident of Missouri according to the law of Missouri; that plaintiff also engages in interstate commerce outside the State of Missouri.

4. That plaintiff does not engage in intrastate commerce in Illinois, nor does it maintain or operate

any offices or terminals in Illinois, nor does it do any business whatsoever in Illinois and only uses the highways of Illinois in exclusively interstate commerce as authorized by the Interstate Commerce Commission.

5. That the Reciprocity Agreement between the States of Illinois and Missouri dated November 21, 1943 has not been terminated either pursuant to the governing law or the express terms of the Agreement itself, and said Agreement was in full force and effect at the time plaintiff claimed reciprocity thereunder and is still in effect under the applicable provisions of the Illinois Motor Vehicle Law (par. 3-402 (B), Ch. 95½, Ill. Rev. Stats. 1957).

6. That since 1934, plaintiff has had an established principal place of business in St. Louis, Missouri; the State of Illinois, under applicable Illinois law and reciprocal agreement, has continuously granted plaintiff reciprocity on all its motor vehicles registered and licensed according to Missouri law until January 1, 1958, at which time plaintiff was denied reciprocity by the State of Illinois.

7. That plaintiff, a Michigan Corporation, authorized to do and doing business in Missouri, has a principal place of business in the States of Missouri and Michigan, and that plaintiff being a resident of Missouri and Michigan whose vehicles are fully registered and licensed pursuant to the law of both states is entitled to reciprocity with the State of Illinois, pursuant to the reciprocity provisions of the Illinois Motor Vehicle Law. (Par. 3-402 (B), Ch. 95½, Ill. Rev. Stats. 1957).

It Is Therefore Ordered, Adjudged and Decreed that the Decision of the Secretary of State dated April 3rd, 1959 denying plaintiff's application for reciprocity is erroneous as a matter of law and the said Decision be and the same is hereby reversed and remanded to the Secretary of State with the direction to

enter an Order granting plaintiff's application for reciprocity for the years 1958 and 1959 from the States of Michigan and Missouri.

Entered this 24th day of July, 1959."

FILE COPY

MOTION FILED MAR 2 1961

No. 750

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

COMPLETE AUTO TRANSIT, INC.,
Appellant,
vs.
CHARLES F. CARPENTIER,
Secretary of State of Illinois,
Appellee

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS, EN BANC

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE AND BRIEF IN SUPPORT THEREOF

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COMPLETE AUTO TRANSIT, INC.,
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ON APPEAL FROM THE SUPREME COURT OF ILLINOIS, EN BANC

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE

National Automobile Transporters Association hereby respectfully moves for a leave to file a brief, appended hereto, as *amicus curiae*, in support of Appellant's jurisdictional statement.

Appellant has consented. On March 13, 1961, movant's counsel, by telegram, requested consent of the Appellee's attorney. As of this date such consent has not been granted and movant has reason to believe it will not be.

National Automobile Transporters Association is a voluntary association of more than 100 motor carriers engaged in the transportation of motor vehicles in interstate commerce under authority granted by the Interstate Commerce Commission. Its members engage in multiple state operations between all of the 48 continental states, including operations in Illinois, and between Illinois and other states of the union. One of the principal purposes of the Association is to express the view of its more than 100 members with respect to judicial decisions involving interstate commerce by individual states, particularly as such decisions affect the members' multiple state operations.

The decision by the Supreme Court of Illinois is of fundamental concern to Association members who must of necessity be residents of the several states in which they operate. The apportionment of a corporation's activities for transportation purposes between the several states, or the assembly of such activities in one state for the purposes of residency, poses a serious problem with respect to operations throughout the United States. By virtue of the inherent nature of interstate and multiple state motor carrier operations it is impossible or infeasible for any corporation to limit its offices and branches to one state. Appellant and Appellee are primarily concerned with the determination to be made by the states of Illinois and Missouri, and the fact that the multiple state motor carrier, as a corporation, is required to maintain equally important branches in more than one state may be overlooked and the matter determined solely as a problem of local state law.

Viewing the matter as a local problem is inconsistent with the broad national purposes represented by the interstate commerce and equal protection of the law provisions of the Federal Constitution. Because its members have such a direct interest in the legal concepts by which corporate activities may be segregated, or unified, by individual states for the purposes of imposing their state taxes, or denying equal treatment, permission is respectfully requested to file the annexed brief, *amicus curiae*.

Respectfully submitted,

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March 21, 1961.

BRIEF OF NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS

National Automobile Transporters Association is composed of more than 100 motor carriers engaged in the transportation of motor vehicles in interstate commerce under operating authority granted by the Interstate Commerce Commission. Under such authority, its members are authorized and required to engage in multiple state transportation throughout the nation, including the State of Illinois. To perform such transportation they must maintain substantial terminal facilities in states other than that of their incorporation, and autonomous places of business in numerous states, in order to effect the transportation of automobiles in the most economical and convenient manner to the general public, including that portion of the public within the State of Illinois.

The location of their terminal facilities is beyond the control of such members and is dictated solely by the determination of the automobile industry as to where, and in what state, plants for the manufacture or assembly of automobiles will be located. As a national organization, embracing corporations required to maintain substantial business locations in more than one state, the Association has a substantial interest in the legal jurisprudence relating to definitions of the term "residence" as applied to corporations in general. An unduly restrictive legal concept of corporate residence which would by law limit a corporation to the state in which it is incorporated, or the state in which it maintains what each and different states

may variously consider to be "the principal place of business," introduces numerous complexities and discriminations into what should be a uniform area of law.

Particularly is the Association concerned with the non-uniform treatment of interstate motor carriers by individual states which imposes unequal and discriminatory taxation as a result of the carriers multi-state operations. Interstate motor carriers must of necessity conduct their operations over interstate highways financed largely by the Federal Government. For such highways they are now taxed at an ever growing rate by such Government. Discriminatory state taxation falling unequally between foreign corporations and domestic corporations, and between various foreign corporations, poses an increasingly critical problem of state and federal relationships.

The Association files this brief in support of Appellant because it believes that it is incompatible with the broad national concepts expressed by the Interstate Commerce Clause of and the 14th Amendment to the Federal Constitution for a state to treat foreign corporations *domesticated* in a sister state differently than foreign corporations *incorporated* in the same sister state.

I.

There is no legal justification for treating Appellant as a foreign corporation domesticated in Missouri any differently than a foreign corporation incorporated there, or having only an office in Missouri.

Two conclusions immediately appear from examination of the factual details of Appellant's operation. First, its St. Louis activities are bona fide, of long standing, and required by the nature of its business. In no wise can they be considered a subterfuge designed to provide a juris-

diction in which to title and pay registration fees on the vehicles there used. Second, it is difficult to think of any additional indicia of corporate presence which could be evidenced in a jurisdiction than here appears with respect to Appellant in Missouri. The ownership and use of real and personal property, the public identification of such property at a specific location, to wit, 3501 Chevrolet Avenue, St. Louis, Missouri, the establishment and use of a bank account and credit facilities, the negotiation of labor contracts, the purchase of supplies and equipment, the collection of freight charges, the payment of employees for services, and the payment of state and municipal taxes, are all the physical acts that could be evidenced by a motor carrier, individual or corporate, within the boundaries of a state.

By virtue of the scale of its activities in Missouri, Appellant has qualified to do business there. This it is required to do by Missouri law.[1] By such qualification it becomes entitled to "the same * * * rights and privileges as a domestic corporation * * * and * * * subject to the same duties * * * and liabilities * * *." *Vernon's Ann. Mo. Stats.* Sec. 351.575.

In Missouri then Appellant enjoys all the rights and duties of a Missouri corporation. Although the provisions of the Illinois statute regarding foreign corporations are identical[2] it refuses to recognize appellant's status in Missouri to be the same as that of "a domestic corporation" of Missouri.

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[1] Foreign corporations doing business in Missouri must qualify and subject themselves to Missouri law, *V. A. M. S.* Sec. 351.571 *et seq.*

[2] *Smith Hurd Ill. Ann. Stats.*, Ch. 32, Sec. 157.103.

Under the decision of the Illinois Court a foreign corporation incorporated in Missouri would be a "resident" of Missouri and not taxed in Illinois on its Missouri vehicles. Although Appellant is under Missouri law entitled to the same rights and privileges as such corporation its Missouri vehicles are taxed in Illinois.

Similarly a foreign corporation, incorporated in a state other than Missouri, but having an office and operations only in that state, would be exempt on its Missouri vehicles in Illinois, but not Appellant. This because in addition to its Missouri operations Appellant does business also in a third state. A similar result would be reached if Appellant were incorporated in Indiana or Kentucky, but was required to maintain substantial operations in Missouri or Michigan. The Association submits that the distinction drawn here is without foundation in fact and so illogical as to offend basic concepts of equal protection and due process of law. Appellant pays more taxes on its wholly interstate operations in Illinois merely because of its multi-state character. If its movements were limited to the two states of Missouri and Illinois, the taxes here in question would be inapplicable. The disproportionate tax on its interstate movements results flatly and solely from the multi-state character of its operations.

The tax treatment of Appellant thus poses a substantial federal question and one of first impression.

The treatment accorded Appellant with respect to its domestication in Missouri may be compared to the treatment under similar law of foreign corporations domesticated in Illinois. The purpose of the identical Illinois and Missouri provisions[3] is to "place foreign corporations

[3] V. A. M. S. Sec. 351.575; Smith Hurd Ill. Ann. Stats., Ch. 32, Sec. 157.103.

* * * upon precisely the same footing as domestic corporations * * * to obliterate any distinction in the treatment * * * to give the foreign corporation the same standing in the eye of the law * * *, *Friend & Co. v. Goldsmith & Seidel Co.*, 307 Ill. 45, 53.

Illinois has thus determined as to foreign corporations within its borders, "the residence of a foreign corporation might be in any state where it was by comity permitted to exercise its franchise * * *", *Friend & Co. v. Goldsmith & Seidel Co., supra*, p. 49. Thus a Missouri corporation with a principal office in St. Louis, Missouri, but also maintaining an office and activities in Cairo, Illinois was determined to be a resident of Illinois for purposes of law like any domestic corporation, *H. C. St. J. R. R. Co. v. Crane*, 102 Ill. 249. See also *Bank of North America v. Chicago, Danville and Vincennes R. R. Co.*, 82 Ill. 493.

Yet in exactly the reverse situation, where Missouri has in all respects treated Appellant as a resident of Missouri under exactly the same provisions of law, Illinois holds it to be a nonresident. Surely such determination is not justified merely because Appellant is a foreign carrier operating in Missouri whereas this cited Illinois decisions involved foreign carriers operating in Illinois?

The Association also submits that "in the eye of the law" the rule which permits a corporation to be deemed a resident "in any state where it (exercises) its franchise * * *" precludes, as a matter of due process, such a multi-state corporation from being deemed a resident of only one state.

Multi-state carriers have long been held to reside in every state in which they carry on intrastate transportation acivities, *Davis v. Banking Co.*, 17 Ga. 323, *Bristol v.*

Railroad Co., 15 Ill. 437, *Railroad Co. v. Paul*, 72 Miss. 487, *Slaven v. Railroad Co.*, 51 Mo. 308, *Tobin v. Railroad Co.*, 47 S. C. 387. "* * * if it have several places of business, it must also be deemed to have several places of residence * * *", *Poland v. United Traction Company*, 88 App. Div. 281, 283, 177 N. Y. 577.

This apportionment of a carrier's residency to every state in which it has "a usual place of business" does not offend due process because "the very act of transportation, (is) the dominant end and aim of its corporate existence", *International Milling Co. v. Columbia Transp. Co.*, 292 U. S. 498, 520, (Water carrier). If due process supports the legal residence of a carrier in any state in which it carries on substantial activities, the converse is equally true, namely that due process precludes it from being treated as a non resident in any such state where substantial activities are so performed. Despite, however, the substantial nature of Appellant's operations in Missouri which, "in a very real and practical sense," make it a resident there, *International Milling Co. v. Columbia Transp. Co., supra*, page 519, Illinois severs completely this corporate relationship with Missouri and leaves Appellant like a wraith suspended in mid air.

"In a legal sense the distinction between foreign and domestic corporations doing business within the borders of a state is non-existent.[1] Indeed this court has said that the original foundation for such distinction was a metaphysical one now "displaced * * * with common sense." *Neirbo Co.*

[1] 31 States have virtually identical provisions to those of Illinois and Missouri, 3 have seemingly broader provisions for registered foreign corporations, and in 14 states the statutes contain no indication that a domesticated foreign corporation is to be treated any differently than an incorporated domestic corporation. *CCH Corporation Law Guide*, Vol. 1, paragraph 710 and paragraph 810.

v. Bethlehem Shipbuilding Corp., 308 U. S. 165, 169. As noted the statutes and decisions of Illinois and Missouri "obliterate the distinction" between foreign and domestic corporations within their borders. Surely then due process proclaims the distinction cannot be resurrected by one of such states at this late date in order to treat a corporation completely domesticated in a sister state as a non-resident thereof for the sole purpose of imposing a tax not otherwise applicable. Otherwise, the distinction drawn has "no relation to the opportunities, benefits, or protection which * * *," are extended by the various states in which the corporation is operating. *Standard Oil Co. v. Peck*, 342 U. S. 382, 385.

II.

The statute denies Appellant equal protection of the law by requiring it to pay a tax in Illinois without extending to it the same benefits received for such payment by Illinois corporations and other favored foreign corporations.

At the time Appellee imposed the taxes in question upon Appellant's Missouri vehicles the State of Illinois had in effect reciprocity agreements with forty states, including the states of Georgia, Michigan, Missouri and Ohio in which Appellant is required to maintain principal places of business.[5] Under these agreements Illinois corporations and foreign corporations deemed by Illinois to be residents thereof, became entitled upon payment of Illinois license fees on their vehicles to substantial exemptions from taxation in the forty other states which have entered into such agreements with Illinois. This was in accord with the

[5] *Smith Hurd Ill. Ann. Stats.* Ch. 95½, Sec. 3-402, p. 139.

purpose of the law which was to secure to residents of Illinois reciprocal privileges in such other states, *Illinois Revised Statutes*, 1957, Ch. 95½, Sec. 3-402 B (1).

As one author has pointed out, reciprocity agreements between states "are, for all practical purposes, treaties * * * the line of reasoning [applicable to treaties] is applicable as well to interpretation of interstate truck reciprocity agreements and by no device, restrictive reservation, or otherwise, should a state which is party to such a treaty be permitted by its courts to avail itself of loopholes of escape from the general scope * * *", *Kyanitz, The Nature of Truck Reciprocity Agreements, 15 Jr. of the Mo. Bar*, 140, 143, 144 (March, 1959).

Here Illinois by its courts has found an attractive loophole in its own agreement. While securing to a certain class of corporations, both domestic and foreign, extensive privileges from taxation in 40 jurisdictions, it finds a way to impose its taxes on certain foreign corporations, like Appellant, engaged in interstate commerce under circumstances which denies them the same benefits received by the first class.

Although, under like circumstances if Appellant's branch office were in Cairo, Illinois instead of St. Louis, Missouri, Illinois would hold it a resident of Illinois, and although Missouri under statutory provisions, said by Illinois to be designed to "obliterate any distinction" between domestic and foreign corporations as to residency, has treated Appellant as a resident of Missouri: Illinois deems Appellant a nonresident of Missouri.

Certainly, as applied by Appellee, its Act, "in its practical operation does not require like fees for equal privileges held by foreign corporations * * * under the same circumstances", *Air Way Electric Appliance Corporation v. Day*, 266 U. S. 71, 84.

CONCLUSION

It is respectfully submitted that the Court should note probable jurisdiction, determine this matter on the merits, and declare the Act unconstitutional as applied by Appellee to Appellant.

Respectfully submitted.

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Counsel for National Automobile Transporters Association, Amicus Curiae.

PROOF OF SERVICE

I, George S. Dixon, attorney of record for National Automobile Transporters Association, Amicus Curiae herein, depose and say that on the 21st day of March, 1961 I served a copy of the foregoing Motion for Leave to File Brief on Behalf of National Automobile Transporters Association as Amicus Curiae and Brief in Support thereof on attorneys for Appellants and on Mr. Samuel H. Young, Attorney General of Illinois, attorney for Appellee by depositing same in the United States Post Office, with air-mail postage prepaid, addressed to counsel of record at their Post Office addresses.

GEORGE S. DIXON

Subscribed and sworn to before me at Detroit, Michigan, this 21st day of March, A. D. 1961.

.....
Notary Public, Wayne County, Michigan.
My Commission Expires:.....

ILE COPY

Office Supreme Court, U.S.
FILED
MAR 31 1969
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1968

No. 750

COMPLETE AUTO TRANSIT, INC.,

Appellant,

vs.

CHARLES F. CARPENTIER, Secretary of State of the State of Illinois,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

OBJECTION TO MOTION OF NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION TO FILE THEIR BRIEF AS AMICUS CURIAE

Certificate of Service

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Attorney General of the State of Illinois,
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Suite 900,
Chicago 1, Illinois,

Counsel for Appellee.

SAMUEL H. YOUNG,
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Assistant Attorneys General,

Of Counsel.

Printed by Authority of the State of Illinois

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 750

COMPLETE AUTO TRANSIT, INC.,

Appellant,

vs.

CHARLES F. CARPENTIER, Secretary of State of the State of Illinois,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS, EN BANC.

OBJECTION TO MOTION OF NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION TO FILE THEIR BRIEF AS AMICUS CURIAE.

Certificate of Service.

Charles F. Carpentier, Secretary of State of Illinois, Appellee, has withheld his consent to the filing of a brief by National Automobile Transporters Association (hereinafter referred to as "Association") as *amicus curiae* in

support of Appellant's jurisdictional statement for the basic reason that only a problem of local State law is involved. A dismissal of the Appeal, or, in the alternative, affirmance of the judgment appealed from, will have no fundamental affect on interstate carriers which the Association purports to represent.

An *alternative* provision for motor vehicle registration, to that involved in this appeal, is available to Appellant and to interstate carriers, represented by the National Automobile Transporters Associations, which are not residents of Illinois but utilize its highways. Section 3-402 B (2) of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, Chap. 95½, Par. 3-402 B (2)) provides for an apportionment" reciprocify privilege, and is as follows:

> "(2) Any motor vehicle, trailer, semi-trailer and pole trailer need not be registered in this State, provided:
>
> (a) same is properly registered in another State pursuant to law or to a reciprocity agreement or declaration; and
>
> (b) that such vehicle is part of a fleet of vehicles owned or operated by the same person who registers such fleet of vehicles pro rata among the various States in which such fleet operates; and
>
> (c) that such vehicle is part of a fleet of vehicles, a portion of which are registered with the Secretary of State of Illinois in accordance with an agreement or arrangement concurred in by the Secretary of State of Illinois based on one or more of the following factors: ratio of miles in Illinois as against total miles in all jurisdictions; situs or base of a vehicle, or where it is principally garaged, or from whence it is prin-

> cipally dispatched or where the movements of such vehicle usually originate; situs of the residence of the owner or operator thereof, or of his principal office or offices, or of his places of business; the routes traversed and whether regular or irregular routes are traversed, and the jurisdictions traversed and served; and such other factors as may be deemed material by the Secretary and the motor vehicle administrators of the other jurisdictions involved in such apportionment;"

Under "apportionment" reciprocity, the interstate carrier need only register a percentage of its motor vehicles with the State of Illinois, based upon the miles traveled in Illinois compared to miles traveled in all other states with respect to such motor vehicles. As previously pointed out in Appellee's Motion to Dismiss This Appeal or to Affirm the Judgment Appealed From, such "apportionment" provisions were specifically placed in the Illinois Statute to afford relief to interstate motor carriers who had been complaining about state taxation of their motor vehicles, based on residence, for the use of the highways of that state. Therefore, the Association's statement that "a fundamental basis for allowing it to file its brief as *amicus curiae* is that its members must of necessity be residents of the several states in which they operate" is obviously not correct, in view of the "apportionment" provision, above quoted.

An insight into the minimal effect of the decision below (which dealt with reciprocity afforded interstate carriers based on the "residence" section of the Illinois Motor Vehicle Law) on interstate carriers is evident from an analysis of statistics relative to the operation of interstate carriers

over Illinois highways under reciprocity based on the "apportionment" section of the Illinois Motor Vehicle Law. As of October 31, 1960, 831 applications for apportionment under Section 3-402 B (2) of the Illinois Motor Vehicle Law were filed with the office of Appellee covering 36,989 motor vehicles. The use of Illinois highways, via "apportionment" privileges, was extended to 30,147 of these motor vehicles which were licensed in other states, while only 6,482 of them were registered (licensed) in Illinois.

Of the 6,842 vehicles registered under "apportionment", only 3,490 vehicles are registered (licensed) in Illinois, pursuant to "apportionment", by companies which are not incorporated in Illinois and do not maintain their principal place of business there. In addition to these 3,490 vehicles, these companies operate 24,588 vehicles, which are not registered in Illinois, and which have been given apportionment privileges in Illinois.

From the above statistics compiled from the records of the office of the Appellee with reference to the alternative "apportionment" reciprocity provision of the Illinois Motor Vehicle Law, the conclusion is inescapable that the construction given by the Illinois Supreme Court to the reciprocity exemptions set out in Section 3-402 B (1) (Ill. Rev. Stat. 1957, Chap. 95½, Par. 3-402 B (1)), the basis of this appeal, is not of such fundamental importance to interstate carriers as to warrant intervention by the Association.

CERTIFICATE OF SERVICE.

I, Raymond S. Sarnow, one of counsel for appellee, and a member of the Bar of the Supreme Court of the United States, hereby certify, that on or before the 30th day of March, 1961, I served copies of the foregoing appellee's "Objection to Motion of National Automobile Transporters Association to File Their Brief as *Amicus Curiae*", as follows: by mailing five copies of said Objection to Larry A. Eskilsen, 501 Perpetual Building, 1111 E. Street, N. W., Washington 4, D. C.; Tweedie Fisher, Bacon Building, Jefferson City, Missouri; Edmund M. Brady, 2280 Penobscot Building, Detroit 26, Michigan; Griffin, Winning, Lindner & Newkirk, 406 First National Bank Building, Springfield, Illinois; and George S. Dixon, 2150 Guardian Building, Detroit 26, Michigan, in duly addressed envelopes, postage prepaid.

RAYMOND S. SARNOW,

One of Counsel for Appellee.

Respectfully submitted,

WILLIAM G. CLARK,
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RAYMOND S. SARNOW,
Assistant Attorneys General,
Of Counsel.

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JAMES B. [illegible] Clerk

No. 750.

IN THE

SUPREME COURT OF THE UNITED STATES.

COMPLETE AUTO TRANSIT, INC.,
Appellant,

v.

CHARLES F. CARPENTIER, Secretary of State of Illinois,
Appellee.

On Appeal from the Supreme Court of Illinois, En Banc.

BRIEF

Opposing Motion to Dismiss or Affirm the Judgment.

LARRY A. ESCKILSEN,
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St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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Appellee.

On Appeal from the Supreme Court of Illinois, En Banc.

BRIEF

Opposing Motion to Dismiss or Affirm the Judgment.

I.

THE FEDERAL QUESTIONS PRESENTED IN THE JURISDICTIONAL STATEMENT WERE TIMELY AND PROPERLY RAISED AND EXPRESSLY PASSED ON.

Appellee, at pages 14, 15 and 16 of his Motion, asserts to this Court that Appellant did not timely and properly raise and preserve in the state court the Federal Questions presented in the Jurisdictional Statement. Whether Appellant's assertion is to prevail depends upon whether the highest court of the State of Illinoi agrees. We therefore look to that state court for the decision.

This exact issue was presented by Appellee to the Illinois Supreme Court by motion and that court expressly ruled contrary to Appellee's contention. Since Appellee's filing and service of his Motion to Dismiss and Affirm with this Court, Appellee filed in the Court below, from which Appellant appeals and from which was issued a certification that constitutional questions were raised and preserved, Jurisdictional Statement, Appendix D, page 26, his "Motion to Rescind Certificate of the Supreme Court of the State of Illinois", Appendix A hereof. Thereafter and on March 29, 1961, the Supreme Court of Illinois issued its ruling as follows, "Motion by Appellant (Appellee on this appeal) to rescind certificate of the Supreme Court was denied", Appendix B hereof.

The aforesaid highest court of the State of Illinois, having issued its certificate that the federal questions were raised and preserved in the state courts, Appellant submits that Appellant has timely and properly raised and preserved federal questions under Illinois practice and that they were expressly passed on by the courts of the State of Illinois, as evidenced by that Court's Certificate to that effect and its denial of Appellee's Motion to Rescind said certificate.

It is clear therefore that the Illinois case cited here by Appellee and in his Suggestions in support of Motion to rescind certificate, Appendix C hereof, has no bearing and that Central Greyhound Lines v. Mealey, 334 U. S. 653, and related cases cited by Appellant, determine this matter adversely to Appellee.

II.

SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTIONS ARE PRESENTED.

A.

The crux of Appellee's argument is the complete misconception that, page 8, Motion to Dismiss, "Auto Transit seeks to establish that it may have a 'residence' in any state in which it has a terminal and garages and maintains its motor vehicles". Appellant has not sought to establish that at all. What Appellant submits, to the contrary, is that when one state, in this case Missouri, has always treated it in all respects as a domesticated corporation, as to long continued activities which Appellant must carry on in Missouri, (Jurisdictional Statement, pages 8 and 9) Illinois, under identical statutory and judicial pronouncements, denies its equal treatment by deciding it is not a resident of Missouri.

No basis for this discriminatory treatment is set forth in the Illinois Court's Opinion or the Appellee's Motion.

The treatment accorded Appellant with respect to its domestication in Missouri may be compared to the treatment under similar law of foreign corporations domesticated in Illinois. The purpose of the identical Illinois and Missouri provisions is to "place foreign corporations * * * upon precisely the same footing as domestic corporations * * * to obliterate any distinction in the treatment * * * to give the foreign corporation the same standing in the eye of the law * * * ", Friend & Co. v. Goldsmith & Seidel Co., 307 Ill. 45, 53.

Illinois has thus determined as to foreign corporations within its borders, "the residence of a foreign corporation might be in any state where it was by comity permitted

to exercise its franchise . . .", Friend & Co. v. Goldsmith & Seigel Co., supra, p. 49. Thus a Missouri corporation with a principal office in St. Louis, Missouri, but also maintaining an office and activities in Cairo, Illinois was determined to be a resident of Illinois for purposes of law like any domestic corporation, Ill. C. St. L. R. R. Co. v. Crane, 102 Ill. 249. See also Bank of North America v. Chicago, Danville and Vincennes R. R. Co., 82 Ill. 493.

Yet in exactly the reverse situation, where Missouri has in all respects treated Appellant as a resident of Missouri under exactly the same provisions of law, Illinois holds it to be a nonresident. Surely such determination is not justified merely because Appellant is a foreign carrier operating in Missouri whereas this cited Illinois decision involved foreign carriers operating in Illinois.

The Appellee has taken considerable time artfully drafting his Motion in a light which tends to steer away from the federal questions presented by this appeal.

It is not at issue here whether the state has the exclusive right to construe with finality its statutes. The construction placed upon statutes by the State of Illinois is of little concern here, but the **effect** of that construction is of grave concern to Appellant and the Supreme Court of the United States. It is here where the federal questions arise.

Likewise, Appellant does not assert in this Court, as Appellee would make believe is indicated in his Motion at pages 7 through 16, that the courts of Illinois may not interpret the Motor Vehicle Law of Illinois as it wishes. It is the **discrimination** which results to Appellant.

Appellee suggests that Appellant may in the alternative prorate its motor vehicles. Once again, this affords no defense to the federal questions presented. Furthermore, appellant would be forced and required to pay this proration tax when others similarly situated would not. This

fallacy was pointed out in the Jurisdictional Statement, pages 10 through 17.

Although Appellant asserts that the construction placed upon the Illinois Motor Vehicle Law is a right to be enjoyed by the state courts and only the effect is subject to eyes of the federal law, Appellant suggests that Appellee has failed to support even his position that the general law requires a corporation to be a "resident" of its state of incorporation. Appellee cites the **Missouri** case of State v. Tustin, 322 S. W. 2d 179, as one of the courts of last resort. In this criminal case the defendant, a motor carrier, was incorporated in Delaware. Its only office or place of business in that state is a registered agent; its principal place of business is Indiana, where the vehicles are based, garaged and usually repaired, and from whence such vehicle is usually and customarily operated. Defendant purchased the registration tax only from Indiana and did not purchase the tax from Delaware. The plaintiff, State of Missouri, contended defendant must purchase the registration tax from Delaware, the state in which it was incorporated.

This Missouri court ruled in 1959, loc cit. 182, 183:

> "It is a matter of common knowledge that a great many corporations are organized under Delaware law, although they live their actual lives and do their actual business as at least quasi citizens of Missouri and other states. A construction contended for by respondent would give Missouri a Grade A reciprocity with the State of Delaware, but it could result in leaving Missouri as an island surrounded by other states which retaliated by feeding a considerable number of our residents our own bitter medicine. This we think was not what the lawmakers intended.
>
> "It is our conclusion that Ruan (employer of defendant driver) was a resident of the State of Indiana

within the intended meaning of the act and that having complied with the laws of that state it was entitled to the privileges of occasionally operating its motor vehicle upon the highways of the State of Missouri without registering it for license in this state."

Furthermore, the plaintiff State cited this Missouri court the same cases cited by Appellee at pages 8 and 13 of his motion, to wit: Western Express Co. v. Wallace and State v. Garford Trucking Co. This court stated at loc. cit. 181 and 182:

"These cases are not too helpful, however, because in each one the exemption claimant was also a resident of the state in which it claimed the exemption."

Appellee would lead this Honorable Court to believe that Appellant has merely chosen to register its motor vehicles in Missouri, and that Appellant has made this choice recently and so as to avoid registering in Michigan. (It is the rule of this court that facts must be supported by the record and when facts, if any, are stated, citations to the record must appear. Nowhere in Appellee's motion does it support the facts it recites by record citations. This failure should be considered by the court in ruling upon Appellee's motion.)

The facts are as stated in the Jurisdictional Statement at pages 8, 9 and 10. Appellant has been transporting automobiles in interstate commerce twenty-three years from General Motors plant at St. Louis, Missouri (R. 118); the State of Illinois consistently extended Appellant reciprocity on Missouri registration tax and treated Appellant as a resident of Missouri (R. 145) until the present litigation. Is it, therefore, proper for Appellee to state something that is not in the record?

Appellant was not doing any more or less at the time of this litigation than it was twenty-three years ago when it commenced its operation at St. Louis, Missouri.

The second basic misconception in Appellee's Motion is that Appellant herein, in seeking reciprocity on similar facts, to wit, operation of its Missouri registered motor vehicles in Illinois "without the payment of any registration fees" (Motion page 3), is somehow indulging in an unusual and unique request for equal consideration. In fact, Illinois registered motor vehicles are operated over highways located in forty other states without payment of any fees, in exchange for the specific privilege denied Appellant, namely equal exemption in Illinois. Surely the hand that receiveth such privileges cannot castigate the hand that asketh only the same equal treatment. The denial of such equal treatment by one who takes advantage of it for his own purposes certainly presents a substantial federal question of first impression.

CONCLUSION.

Appellant has not now, nor does it in the future, intend to register its vehicles and pay the tax in just any state for the purpose of avoiding the Illinois tax. Appellant is treated as a resident of Missouri, Michigan and other states in which it has a principal office and bases, garages, maintains and services its vehicles. Being treated as a resident in these states, Appellant is required to pay the registration tax there. It is not a "choice" made by Appellant.

Appellant concludes that it has raised, presented and preserved the federal questions stated in its Jurisdictional Statement. This point was decided when the Supreme Court of Illinois certificated that the federal questions were raised, presented and expressly passed upon, and thereafter affirmed this certification by **denying** Appellee's "Motion to Rescind Certificate of the Supreme Court of the State of Illinois".

There are real and novel questions of first impression presented in the Jurisdictional Statement. The construction and interpretation of the Motor Vehicle Law of Illinois raises the substantial federal questions herein presented. It is earnestly urged that the court exercise its jurisdiction and rule upon the federal issues presented, thereby laying to rest these issues as they relate to motor vehicles traveling exclusively in interstate commerce.

Respectfully submitted,

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Attorneys for Appellant.

LARRY A. ESCHLSEN,
TWEEDIE FISHER,
EDMUND M. BRADY,
Of Counsel.

APPENDIX A.

In the Supreme Court of the
State of Illinois.

Complete Auto Transit, Inc., a Corporation,
Plaintiff Appellee,

No. 35,597.

Charles F. Carpentier, Secretary of State of the State of Illinois,
Defendant Appellant.

Motion to Rescind "Certificate of the Supreme Court of the State of Illinois".

Now comes the defendant appellant, Charles F. Carpentier, Secretary of State of the State of Illinois, and moves the Court to rescind a certain "Certificate of the Supreme Court of the State of Illinois" executed by the Honorable Walter V. Schaefer, Chief Justice, on January 12, 1961, in the above captioned cause, and for grounds therefor states as follows:

1. That the records of the Clerk of the Supreme Court of the State of Illinois show that a "Certificate of the Supreme Court of the State of Illinois" was executed by the Honorable Walter V. Schaefer, Chief Justice of the Supreme Court of the State of Illinois, on January 12, 1961, upon the motion of the plaintiff appellee, Complete Auto Transit, Inc.

2. That the defendant-appellant never at any time, prior to the execution of the certificate, nor at any time, thereafter, until on or about February 18, 1961, received any

notice with respect to the presentation of such motion to this Court. Further, records of the Clerk of the Supreme Court indicate that no notice was given to defendant-appellant and an affidavit in support of this statement is attached hereto.

3. That as a consequence since the defendant-appellant received no notice, the defendant-appellant did not have an opportunity to be heard nor to present written objections to such certificates, or with respect to such motion nor to object thereto, all contrary to the Rules of the Supreme Court of Illinois.

4. That since notice was not given to defendant-appellant and defendant-appellant had no opportunity to be heard or otherwise object in writing, said certificate should be rescinded.

5. That, in addition, defendant-appellant respectfully states that said certificate is erroneous in the following respects:

(a) Defendant-appellant states that the second sentence of the second paragraph of said certificate is incorrect and erroneous, which sentence reads as follows:

> "It is further certified that said Plaintiff-Appellee at its earliest opportunity in its Petition for Rehearing filed in this Court set up constitutional issues as follows: * * *"

This statement, in the opinion of the defendant-appellant, is incorrect since such constitutional issues were not raised by the plaintiff-appellee at its earliest opportunity and in point of fact, under the law of Illinois, plaintiff-appellee waived its right to raise constitutional issues since it failed to obtain a ruling thereon in the Circuit Court of Sangamon County and

failed to urge such constitutional issues to this Court in the above captioned cause of action.

(b) Further, the defendant appellant states that the following portion of the certificate is incorrect:

> "It is further certified that the judgment of this Court denying Plaintiff-Appellee's Petitions for Rehearing necessarily was confronted with said constitutional issues and said judgment necessarily passed on those issues and held that Section 1-155 did not violate the Fourteenth Amendment to the Constitution of the United States."

This statement is incorrect, in the opinion of defendant-appellant, since the law in Illinois is that before the Supreme Court of Illinois will pass on a constitutional question, such question must have been raised in the trial court, be urged and passed on there and be properly preserved on appeal.

In support of defendant-appellant's motion there is attached hereto the following: Affidavit of Samuel H. Young; Suggestions in Support of Motion; Certificate of the Supreme Court of the State of Illinois; Opinion of the Supreme Court of Illinois in this case; and a copy of the opinion of the Circuit Court of Sangamon County.

Respectfully submitted,

.....

William G. Clark,
Attorney General of the
State of Illinois.

Samuel H. Young,
Special Assistant Attorney General,
Of Counsel.

APPENDIX B.

State of Illinois.

Office of
Clerk of the Supreme Court,
Springfield.

March 29, 1961.

Mr. Tweedie Fisher,
Attorney at Law,
Bacon Building,
Jefferson City, Missouri.

Dear Mr. Fisher:

In Supreme Court today, in case No. 35,597, entitled:

Complete Auto Transit, Inc.,
a Corporation, Appellee,

vs.

Charles F. Carpentier, Secretary of
State of the State of Illinois,
Appellant,

motion by appellant to rescind Certificate of the Supreme Court was denied.

Very truly yours,

/s/ Mrs. Earle Benjamin Searcy,
Clerk of the Supreme Court.

APPENDIX C.

The following excerpts are from Appellee's Suggestions in Support of Motion to Rescind:

In support of the motion of the defendant, Charles F. Carpentier, to rescind or vacate a certain Certificate of the Supreme Court of the State of Illinois the following suggestions are made:

. . . . . .

That it is readily apparent upon the review of the opinion in the Circuit Court of Sangamon County and from a review of the opinion of the Supreme Court of Illinois that Complete Auto Transit, Inc., failed to preserve its right to raise issues involving the Constitution of the United States before the Supreme Court of Illinois, and, accordingly, such issues were not raised by plaintiff-appellee (Complete Auto) at its "earliest opportunity" and were not "necessarily passed on" by the Supreme Court of Illinois and in support of such contention cites the case of **Group** Securities, Inc., v. Carpentier, 13 Ill. 2d 41, 1958.

Respectfully submitted,

William G. Clark,
Attorney General of the State of Illinois.

Samuel H. Young,
Special Assistant Attorney General,
Of Counsel.